

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CITY OF LAKE LAND EMPLOYEES )  
PENSION PLAN, individually and )  
on behalf of all others )  
similarly situated, )  
Plaintiff, ) Case No. 10 C 6016  
Chicago, Illinois  
-vs- ) January 22, 2016  
1:00 p.m.  
BAXTER INTERNATIONAL INC., )  
Defendant. )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JOHN J. THARP, JR.

APPEARANCES:

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1 (Proceedings heard in open court:)

2 THE CLERK: 10 CV 6016, City of Lakeland v. Baxter.

3 MR. ROBBINS: Good afternoon, Your Honor. Robert  
4 Robbins on behalf of the pension fund. With me is Jim Barz  
5 and Jeff Light. And our liaison counsel representative Lori  
6 Fanning is here as well.

7 MR. FUCHS: Andrew Fuchs for defendants.

8 THE COURT: Good afternoon.

9 MR. ROBBINS: Good afternoon.

10 THE COURT: All right. We are here on a final  
11 approval hearing, fairness hearing with respect to the  
12 proposed settlement that the parties have reached. The  
13 preliminary approval order was granted on September 18, 2015.  
14 I understand that there was one objection filed by Mr. Price;  
15 is that correct?

16 MR. ROBBINS: Yes, Your Honor. Mr. Price submitted  
17 an objection addressed to the Court. It did not follow the  
18 procedures set forth in the notice for submitting a proper  
19 objection. He did not indicate when he purchased, acquired or  
20 sold any shares of Baxter stock, so there's no way from the  
21 face of his objection to determine whether he is actually a  
22 member of the class. But as we indicated in our reply papers  
23 and, you know, if he is to attend the hearing and state a more  
24 specific objection to the settlement itself, we would be happy  
25 to hear him and answer -- you know, respond to that objection.

1           THE COURT: All right. Is Mr. Price present? All  
2 right. He's not present.

3           The objection that was received, in addition to the  
4 deficiencies that Mr. Robbins has just identified, contain no  
5 explanation whatsoever of the grounds or bases of the  
6 objection. It did indicate that Mr. Price planned to attend  
7 this hearing. If he shows up in the course of the hearing, I  
8 will hear him; but if that does not occur, the objection will  
9 be overruled.

10           All right. So I have received the motion for  
11 approval, and I have reviewed it. I don't know if you have  
12 comments, Mr. Robbins, or want to put anything on the record  
13 beyond what you've submitted in writing?

14           MR. ROBBINS: Your Honor, I think our submissions are  
15 quite thorough and establish that we have -- the settlement  
16 here satisfies the factors enumerated by the Seventh Circuit  
17 in *Wong v. Creative Health* and other cases as well as to why  
18 this settlement is fair, reasonable and adequate.

19           You know, we believe the recovery here is a  
20 substantial recovery for the class. As Your Honor mentioned,  
21 there was only the one objection. There were eleven opt-outs,  
22 requests for exclusion submitted. Those were all by  
23 individual shareholders. No institutional investors have  
24 requested to be excluded from the class. So the reaction of  
25 the class itself is overwhelmingly positive, and we view that

1 as a substantial factor in support of the fairness,  
2 reasonableness and adequacy of the settlement and ask that the  
3 Court enter the final judgment, approve the plan of allocation  
4 and award attorneys' fees and expenses as requested. If Your  
5 Honor -- I'm happy to walk through those elements if you  
6 prefer, but --

7 THE COURT: Not necessary. As I said, I have gone  
8 through the material. I'll put some findings on the record  
9 momentarily.

10 Anything the defendants want to put on the record  
11 or --

12 MR. FUCHS: We have nothing to add, Your Honor.

13 THE COURT: Okay. All right. I have already  
14 addressed the issue of the objector. Certification of a  
15 settlement class is already set forth and the bases for  
16 certification of a settlement class are already set forth in  
17 the preliminary approval order. And I'll reaffirm that in the  
18 context of this settlement where the parties have reasonably  
19 agreed to resolve the dispute -- and this is the sort of --  
20 notwithstanding there was a substantial argument between the  
21 parties that was ultimately not resolved with respect to class  
22 certification on the price impact issue, notwithstanding that  
23 this type of case is almost paradigmatic for class  
24 certification and particularly so in the context of a  
25 settlement, so I do confirm that the conditions for

1 certification of the settlement class under Rule 23, I  
2 believe, are adequately satisfied.

3           The factors relevant to the Court's evaluation of the  
4 fairness of the settlement include numerous factors, but I  
5 will mention what I think are the most significant briefly.

6           First is the -- to be considered is the size of the  
7 settlement itself. This represents a very significant  
8 recovery. I think the net recovery to the class after  
9 deductions from the settlement fund for counsels' fees, other  
10 administrative expenses and that sort of thing leaves a net  
11 recovery of approximately \$30 million to the class. That  
12 recovery is significantly in excess -- about three times  
13 greater than the fees earned by counsel. So this is not a  
14 situation where it is remotely the case that the fees earned  
15 by counsel from the litigation outstrip the recovery for the  
16 class.

17           By any number of aspects, this is a very significant  
18 recovery even though, you know, where you've got a maximum  
19 damage model that might offer upwards of a billion dollars in  
20 damages, the data that's submitted in support of the  
21 settlement agreement shows that average recovery for  
22 settlements over basically the last two decades in securities  
23 fraud cases involving damages between one and five billion  
24 dollars, the average recovery is 1.2 percent of the maximum  
25 damages; whereas, this recovery is about 3.3 percent,

1 substantially above the average recovery that is achieved in  
2 these kinds of cases.

3           In addition, I note there are many reasons that the  
4 maximum damages that a damage model might estimate can grossly  
5 overstate the likely recovery for the class. Among those  
6 factors being the presence of confounding events that create  
7 issues regarding causation for any price drops corresponding  
8 to the alleged corrective disclosures, the arguable lack of  
9 statistically significant price increases on dates of the  
10 alleged false statements, arguments about the appropriate  
11 length of a class period based on the nature of the alleged  
12 false statements; for example, false statements that are  
13 alleged or arguably are not actionable statements but are,  
14 rather, forward-looking statements subject to safe harbors,  
15 and arguments about the methodology employed by any particular  
16 damage model.

17           In this case, those arguments might include arguments  
18 about the propriety of a two-day event window versus a  
19 one-day event window, the use of a one-year baseline period to  
20 establish the statistical correlation between the movement of  
21 the relevant stock indexes and Baxter stock. Those are all  
22 issues that, you know, could well affect the size of the  
23 damages that the plaintiffs could claim were the case to go  
24 forward and then add to those, of course, those very specific  
25 issues, the difficulties inherent in the substantive

1 allegations of this case proving that statements were actually  
2 false, No. 1, and if they were, the difficulty proving  
3 *scienter* as to the specific defendants.

4           On top of that, one must add the uncertainty and risk  
5 inherent in any litigation, and I add to that as well the fact  
6 that the recovery for class members who participate in this  
7 claims process that is envisioned by the settlement is likely  
8 to be increased by the fact that there are always substantial  
9 numbers of class members who do not submit claims for one  
10 reason or another.

11           I also note in considering the fairness of the size  
12 of the settlement is that the settlement was negotiated at  
13 arm's length by very experienced counsel on both sides,  
14 assisted by a highly respected mediator, former federal judge  
15 with substantial experience mediating and adjudicating cases  
16 like this, and that ultimately this settlement, this arm's  
17 length negotiation didn't produce an agreement directly  
18 between the parties, but the agreement was ultimately the  
19 product of a mediator's proposal. All of those factors weigh  
20 significantly in the Court's evaluation that the size of the  
21 settlement is, in fact, a fair and reasonable settlement in  
22 this particular case for this particular class.

23           Another factor that the Court has considered is the  
24 stage of the proceedings at which this settlement was arrived  
25 at. There was substantial work that had been done, so counsel



1 and the lead plaintiff were in a quite good position to be  
2 able to accurately assess the prospects for success of the  
3 litigation. The case has been extensively litigated from day  
4 one. There were a huge number of documents produced in  
5 discovery. 27 depositions had already taken place by the time  
6 the parties had reached a settlement, substantial expert  
7 discovery had been conducted, and there had already been  
8 significant dispositive motion practice both with respect to a  
9 motion to dismiss that was decided and a pending class  
10 certification motion.

11           Notwithstanding how much had been done, there was  
12 also -- and it's relevant to consider the -- where the case  
13 still had to go and the amount of expense and uncertainty that  
14 would attend litigating the case to its conclusion.  
15 Undoubtedly there would have been further *Daubert* motions, a  
16 summary judgment motion. However, those motions may have been  
17 decided, given the stakes of the litigation, it is highly  
18 likely that there would have been appeals. And even if the  
19 plaintiffs prevailed at summary judgment or at trial or on  
20 appeal or all of the above, any higher award that they might  
21 have achieved -- and that itself is speculative -- would also  
22 be subject to being eroded by the substantial additional  
23 litigation costs and the time value of money that it would  
24 take to get this litigation to ultimately a final conclusion.

25           So all of that weighs heavily in favor of approval of

1 the settlement, as does the opinion of lead -- the lead  
2 plaintiff, who is a large institutional investor, has a very  
3 substantial stake in the outcome of this litigation and  
4 participates in other similar litigation. The opinion of  
5 class counsel, again, highly experienced in these cases, is  
6 also a factor that weighs and the Court takes into  
7 consideration, and, in addition, the favorable reaction of the  
8 class, though extensive efforts to provide notice to all  
9 potential members of the class has been conducted.

10           There have been only 11 notices of exclusion,  
11 opt-outs from the class; only one objection that a very  
12 favorable response by the class members also weighs in favor  
13 of settlement. And I note as well in that regard that there  
14 have been no objections for concerns raised with respect to  
15 the plan of allocation, which the Court has reviewed and finds  
16 to be a thorough and fair, reasonable effort to fairly  
17 allocate the proceeds of this settlement to class members  
18 according to their holdings and the periods in which they  
19 purchased those holdings during the class period.

20           So I have considered all of those factors with  
21 respect to the settlement -- the proposed settlement. They  
22 all weigh, without exception, in favor of approval of the  
23 settlement. And on that basis, I find that this is a fair and  
24 reasonable settlement of the claims asserted in this party,  
25 and I will grant final approval of that settlement.

1           With respect to fees for class counsel, lead counsel  
2 has requested a fee award of 26 percent of the settlement  
3 fund, \$11,050,000, plus expenses of about 1.1 million, and in  
4 addition a pro rata share of the interest earned by the  
5 settlement fund since it was established. The use of the --  
6 a percentage of the fund is a perfectly acceptable means of  
7 assessing a fee for counsel, and there's no question that the  
8 requested percentage of 26 percent is at the low end  
9 of percentages commonly awarded in complex securities fraud  
10 cases, the presumptive range of which is typically about  
11 33 percent. The studies cited in lead counsel's motion show  
12 that recoveries between 25 to 30 percent are typical, and the  
13 range in this case, in any event, is particularly well  
14 supported by the quality of counsel for the plaintiffs, as  
15 well as the quality of the counsel for the defendants.  
16 High-quality arguments on one side demand high-quality,  
17 diligent efforts on the other side, and that has been the  
18 Court's experience in the course of this litigation.

19           Also warranting the fee award is the complexity of  
20 the litigation, the length of the litigation that has already  
21 taken place, and, as well, the potential length is relevant  
22 from the standpoint of what counsel signed on for in terms of  
23 this case going forward and what would potentially be  
24 necessary in this case.

25           The amount at stake in the litigation is also a

1 factor that influences the reasonableness of the fee. There  
2 is a huge amount at stake here, consequently a huge investment  
3 in the case that class counsel has to make. And sometimes  
4 those investments play out. Sometimes they don't. And that  
5 has to be reflected in the fees that are awarded when the  
6 settlement or the resolution is favorable.

7 I also note that the percentage that's requested is  
8 less than the lodestar amount. Usually when we talk about the  
9 lodestar in connection with the fee request, we're talking  
10 about what's the proper positive multiple of the lodestar, but  
11 here the multiplier is actually negative, or less than one.  
12 The lead counsel is asking for less than the lodestar, which  
13 certainly supports the reasonableness of the percentage that  
14 has been requested.

15 Again, I also note there have been no objections by  
16 any class member to the requested fee recovery and that the  
17 fee -- proposed fee award is supported by the lead plaintiff,  
18 who is a substantial institutional investor and negotiated the  
19 fee with counsel and who is in a very good position to  
20 understand whether that is a reasonable fee to pay to counsel.

21 As for the expenses, those are reasonable in light of  
22 the length of the litigation, the status and scope of fact  
23 discovery that has taken place and the complexity of the  
24 expert discovery that has taken place.

25 So on all those bases, I find that the fee award

1 requested by counsel is fair and reasonable in this case, and  
2 I will approve that award and also the relatively, in the  
3 scheme of things, minor request for fees by Mr. Miller's firm  
4 as local counsel here working on behalf of lead counsel. So I  
5 will approve those fee awards as well.

6 I think that covers everything I need to cover.  
7 Actually, let me just double-check. I think there might have  
8 been one -- there was one change I'm going to make to the  
9 final judgment order. Paragraph 13 says, "By consent of the  
10 settling parties, the Court shall retain jurisdiction." The  
11 consent of the settling parties has no bearing on the Court's  
12 jurisdiction one way or the other, so I'm just striking that  
13 statement. Paragraph 13 will just read, "The Court shall  
14 retain jurisdiction for purposes of enforcing the terms of  
15 this judgment," et cetera.

16 I think that's it. Anything anybody thinks I need to  
17 cover that I have not covered?

18 MR. ROBBINS: No, Your Honor.

19 THE COURT: All right. I will sign those orders.  
20 They will go out today. It's been a pleasure dealing with you  
21 all. I appreciate the very high-quality legal work that I've  
22 seen in this case. I appreciate the fact that I didn't have  
23 to ultimately make a ruling on the price impact issue. And  
24 I'll -- I saved my research.

25 All right. Thank you all. Congratulations on

1 getting this resolved, and I assume you all will go have a  
2 well-earned beverage or two.

3 MR. ROBBINS: Thank you, Your Honor.

4 THE COURT: Okay. Take care.

5 MR. FUCHS: Thank you.

6 (Which were all of the proceedings had.)  
7

8 CERTIFICATE

9  
10 I certify that the foregoing is a correct transcript from the  
11 record of proceedings in the above-entitled matter.  
12

13 */s/Kelly M. Fitzgerald*

*January 29, 2016*

14 \_\_\_\_\_  
15 Kelly M. Fitzgerald  
16 Official Court Reporter

\_\_\_\_\_  
Date